

## CHAPTER 1-23: HISTORIC PRESERVATION (§§ 1-23-1 — 1-23-19 [14])

### Section

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Buildings, see Chapter 1-6;

Planning and development, see Chapter 1-13

§ 1-23-1. AUTHORITY.

The county derives authority for this chapter by virtue of its conformance with provisions of the State of Maryland Enabling Act for Historic Area Zoning (Md. Code Ann., Land Use Article, Title 8, as amended).

#### § 1-23-2. PURPOSE.

(A) The preservation of sites, structures, and districts of historical, cultural, archaeological, or architectural significance, together with their appurtenances and environmental settings is a public purpose in the county.

(B) It is the further purpose of this article to:

(1) Safeguard the heritage of the county by preserving sites, structures, or districts which reflect elements of the county's cultural, social, economic, political, architectural, or archaeological history;

(2) Stabilize and improve property values of such sites, structures, or districts;

(3) Foster civic beauty;

(4) Strengthen the economy of the county;

(5) Preserve and enhance quality of life;

(6) Promote the preservation and appreciation of the sites, structures, and districts for the education and welfare of the residents of the county;

(7) Develop an awareness among property owners of the value of preserving, protecting, and restoring areas of historical, cultural, archaeological, or architectural significance; and

(8) Enable the county to identify and officially designate sites, structures, and districts of historical, cultural, archaeological, or architectural importance to the county in order to make such sites, structures, and districts eligible for specific benefits that may be available from various local, state, or federal programs.

(9) Establish and maintain the Frederick County Register of Historic Places as a list of those properties that meet the county's criteria for designation and have been approved for listing in the Register by the County Council.

#### § 1-23-3. DEFINITIONS.

For the purposes of this Historic Preservation Ordinance, the following words and phrases shall have the meanings respectively ascribed to them.

ALTERATION. Any exterior change that would affect the historic, cultural, archaeological, or architectural significance of a designated site or structure, any portion of which is visible

or intended to be visible from a public way, including, but not limited to, construction, reconstruction, moving, or demolition.

APPURTENANCES AND ENVIRONMENTAL SETTINGS. All that space of grounds and structures thereon which surrounds a designated site, **preservation historic** district, or structure and to which it relates physically or visually, and is within the designated boundary of the site, **preservation historic** district, or structure. APPURTENANCES AND ENVIRONMENTAL SETTINGS shall include, but not be limited to, walkways and driveways (whether paved or not), trees, landscaping, pastures, croplands, waterways, open space, setbacks, parks, public spaces, and rocks.

**ARCHAEOLOGICAL DATA RECOVERY.** Also known as Phase III data recovery, this involves large-scale excavations designed to document the data from an archaeological resource before a project proceeds and the resource is lost.

**ARCHAEOLOGICAL EVALUATION STUDY.** Also known as a Phase II survey, this study requires the investigation of adequate portions of archaeological properties to evaluate the significance of the resources. The investigated areas should be no larger than necessary to achieve the research goals.

**ARCHAEOLOGICAL IDENTIFICATION STUDY.** Also known as a Phase I survey, the goal of this study is to locate archaeological properties that may be significant in the area of potential **impact**. This study involves development of research designs, archival and background research, field survey, analysis, and reporting. An archaeological identification study involves some form of sampling to permit the economical investigation of land with a high assurance that significant archaeological resources have not been overlooked.

**ARCHAEOLOGICAL RESOURCES.** This resource type refers to any physical remains or artifacts left behind by human activity that provide information about past cultures, civilizations, and societies. These can include sites, features, artifacts, human remains, and other types of material evidence that have been buried over time.

**ARCHAEOLOGICAL RESOURCES MANAGEMENT PLAN.** A plan prepared by a Professional Archaeologist that is designed to manage and mitigate adverse effects on significant archaeological resources within an area of potential **impact** and create a long-term management plan for these archaeological resources.

**AREA OF POTENTIAL IMPACT.** The geographic area or areas within which a project actively regulated by this chapter may directly, indirectly, or cumulatively cause changes in the character or use of historic properties, if any such properties exist.

**CEMETERY.** Any land or structure, including any natural or prepared physical location, whether originally located below, at, on, or above the surface of the earth, used for the interment of human remains or deposit of funerary objects. The term "cemetery" shall include the terms "graveyard," "burial site," "burial ground," "ossuaries," "burial pits," and "burying ground."

CERTIFICATE OF APPROVAL [APPROPRIATENESS]. A certificate issued by the Historic Preservation Commission indicating its approval of plans for construction, alteration, reconstruction, moving, or demolition of an individually designated landmark, site, or structure or of a site or structure within a designated [preservation] historic district.

CULTURAL RESOURCES. Cultural resources are any prehistoric or historic remains or indicators of human activities, including artifacts, sites, structures, landscapes, and objects of importance to a culture or community for scientific, traditional, religious, or other reasons.

DEMOLITION BY NEGLECT. Any [willful] neglect in the maintenance and repair of an individually designated landmark, site, or structure, or a site or structure within a designated [preservation] historic district that results in the gradual deterioration of these historic resources. [that does not result from an owner's financial inability to maintain and repair such landmark, site, or structure, and which results in any of the following conditions:

— (1) The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows so as to create or permit a hazardous or unsafe condition to exist, as determined by the current building code of Frederick County; or

— (2) The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, the lack of adequate waterproofing, or the deterioration of interior features which will or could result in permanent damage, injury, or loss of or loss to foundations, exterior walls, roofs, chimneys, doors, or windows.]

ECONOMIC HARDSHIP. Extreme economic impact on an individual property owner resulting from application of the historic preservation ordinance.

DIVISION. The Frederick County Division of Planning and Permitting.

EXTERIOR FEATURES. The architectural style, design, and general arrangement of the exterior of an historic structure, including the nature and texture of building material, and the type and style of all windows, doors, light fixtures, signs, or similar items found on or related to the exterior of an historic structure.

GOOD FAITH. Describes a level of review, the provision of information, or type of action(s) taken with respect to requirements under this chapter that are characterized by honesty, objectivity, timeliness, reasonableness, and lacking the intent to mislead.

HISTORIC INTEGRITY. The ability of a property to convey its historical associations or attributes. Seven aspects or standards are used to evaluate the integrity of properties: location, setting, design, materials, workmanship, feeling, and association.

HISTORIC PROPERTY. Historic properties are any historical, archaeological, architectural, or cultural resources designated or eligible for designation by the Frederick County Historic Preservation Commission as a historic resource.

LANDMARK. Any designated site or structure designated by Frederick County outside the boundaries of a preservation historic district that is of exceptional historic, cultural, archaeological, or architectural significance.

[PRESERVATION DISTRICT or] HISTORIC DISTRICT. A significant concentration, linkage, or continuity of sites, structures, or objects united historically, culturally, or aesthetically by plan or physical development. A [PRESERVATION DISTRICT or] HISTORIC DISTRICT shall include all property within its boundaries as defined and designated by the county.

PROFESSIONAL ARCHAEOLOGIST. An archaeologist who meets or exceeds the professional qualifications in archaeology as outlined by the Secretary of the Interior's Professional Qualifications Standards.

RECONSTRUCTION. The process of reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared at a specific period of time.

REHABILITATION. The process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

RENOVATION. See REHABILITATION.

RESOURCE. Any building, structure, site, or object that is part of or constitutes an historic property.

RESTORATION. The process of accurately recovering the form and details of a property as it appeared at a specific period of time by means of removal of later work and the replacement of work missing from that period.

SITE. The location of an event of historic significance, a significant landscape, or a structure, whether standing or ruined, which possesses historic, architectural, archaeological, or cultural significance.

STRUCTURE. A combination of material to form a construction that is stable, including but not limited to buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, bridges, piers, paving, bulkheads, wharves, sheds, coal bins, shelters, fences, and display signs visible or intended to be visible from a public way. The term STRUCTURE shall be construed as if followed by the words "or part thereof."

UNANTICIPATED DISCOVERY. A discovery made when ground disturbance uncovers archaeological resources or evidence of a cemetery.

UNUSUAL HISTORIC VALUE. A property eligible for designation under this chapter with the added requirement that the property represent an outstanding or exceptional aspect of federal, state, or local history, culture, architecture or archaeology that is not otherwise represented within the Frederick County Register of Historic Places, the loss of which would cause irreparable harm to the public interest as stated in § 1-23-2 of this chapter.

§ 1-23-4. HISTORIC PRESERVATION COMMISSION.

(A) Historic Preservation Commission. The county hereby creates a Commission to be called the Frederick County Historic Preservation Commission.

(B) Membership.

(1) The Historic Preservation Commission shall consist of ~~[11]~~ 7 ~~[full]~~ members appointed by the County Executive and confirmed by the County Council. ~~[Two alternate members shall also be appointed by the County Executive and confirmed by the County Council. The alternate members shall vote on matters before the Historic Preservation Commission in the absence of any full members in accordance with the Commission's rules of procedure.]~~ All members of the Commission shall have a demonstrated interest in Frederick County and no more than three members shall be non-residents of Frederick County. ~~[be residents and/or property owners of the County of Frederick.]~~ All members shall possess a demonstrated special interest, specific knowledge, or professional or academic training in such fields as history, architecture, architectural history, planning, archaeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design, or related disciplines.

(2) At least 2 members of the Commission shall possess professional or academic training in 1 or more of the above-listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61. A good-faith effort to locate and appoint such professionals will be made and documentation as to how this effort was accomplished shall be retained by the county.

(3) Not more than ~~3~~ 5 of the Commission members shall be selected from nominations submitted by the County Chamber of Commerce, the County Builders' Association, the County Bar Association, the County Board of Realtors, the Farm Bureau and the Pomona Grange #11. These organizations shall have the right not to submit nominations, in which case the County Executive shall select members as necessary to meet the other requirements in this section. The County Executive may consult other private societies or agencies to request the names of possible members on the Commission. Geographic diversity within the county shall be a goal.

(C) Commission membership qualification criteria. The requirement for Commission membership under the category of demonstrated special interest may be satisfied by formal training in 1 or more of the fields listed in paragraph (B). The requirement for membership under the category of specific knowledge may be satisfied by formal post secondary education, employment or practical experience in 1 or more of the above-listed fields. The requirement for Commission membership under the category of professional or academic training may be satisfied by, at a minimum, 2 years experience as a professional or a bachelor's degree in one or more of the above-listed fields.

(D) Terms. Commission members ~~[and alternates]~~ shall be appointed for terms of 3 years ~~[except that the terms of the initial appointments shall be staggered so that 4 members shall serve terms of 3 years, 4 members shall serve terms of 2 years, and 3~~

members shall serve terms of 1 year, and 1 alternate shall serve for 3 years and the second alternate shall serve for 2 years, so that not more than 5 appointments shall expire in a given year. ~~Commission members~~] and may be reappointed. Terms shall be staggered.

(E) Commission officers. The Commission shall elect, from its membership, a Chairperson and Vice- Chairperson. The Chairperson and Vice-Chairperson shall serve for 1 year terms and shall be eligible for reelection but may not serve more than four [4] consecutive years in the same office.

(F) Vacancy. Any vacancy in the membership of the Commission caused by the expiration of a term, resignation, death, incapacity to discharge duties, removal for cause, or any other reason, shall be filled for a new term, or for the remainder of the term for which there is a vacancy, as the case may be, in the same manner as provided herein for the appointment of the initial members of the Commission. Any vacancy on the Commission shall be filled by the appointing authority within 60 days. In the case of expiration of term, a member may continue to serve until the member's successor is appointed. Unexcused absences at 3 consecutive meetings shall constitute resignation by the member and shall create a vacancy.

(G) Removal for cause. A member may be removed by the County Executive from the Commission for cause, upon written charges, and after a public hearing, by the County Executive or designee.

(H) Compensation. Commission members shall serve with the compensation that the county governing body deems appropriate, as the county governing body provides in the annual budget.

(I) Meetings. The Commission shall hold such regular meetings and hearings as necessary to discharge its duties.

(J) Staff. Consistent with the county's policies and procedures, employees may be assigned to the Commission, and such services and facilities shall be made available as the county deems necessary or appropriate for the proper performance of its duties.

#### § 1-23-5. POWERS AND DUTIES.

(A) As part of its powers and duties, the Historic Preservation Commission:

- (1) Shall adopt rules for the organization and conduct of meetings;
- (2) Shall act upon all applications for certificates of approval [appropriateness];
- (3) Shall submit information regarding Frederick County historic, architectural, archaeological, and cultural resources to the Maryland Historical Trust for the purposes of updating and maintaining [maintain and update] the Maryland Inventory of Historic Properties [Frederick County];

(4) Shall review all petitions for designation to the Frederick County Register of Historic Places and submit recommendations to the county governing body;

(5) For areas which are located within a designated historic site, structure, or district, or which have historic preservation easements held by the County, the Commission shall review any application for a zoning text or map amendment, conditional use, variance, site plan or subdivision approval, and any legislation or other proposals, including preparation and amendment of master plans, and may make recommendations thereon to the appropriate authorities;

(6) Shall have the right to accept and use gifts and services for the exercise of its functions which are given to the county specifically for use by the Historic Preservation Commission;

(7) Shall adopt rehabilitation and new construction design guidelines and criteria for construction, alteration, reconstruction, repair, moving and demolition of property in designated districts or individually designated sites or landmarks which are consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties. Guidelines may include design characteristics intended to meet the needs of particular types of sites, structures, and districts, and may identify categories of changes that do not require review by the Commission because they are minimal in nature and do not affect historic, archaeological, or architectural significance. These design guidelines shall be used in the Historic Preservation Commission's review of applications for certificates of approval [appropriateness];

~~—(8) May, at the request of an owner or applicant, offer consultation with respect to changes to interior features; and~~

(8) [9] Shall review and recommend for action by the county governing body the acquisition of historic preservation easements on designated landmarks, structures, or sites and, when deemed appropriate by the Commission, sites or structures located in, or adjacent to, a designated district, consistent with the county's ordinances, resolutions, local public law, policies and procedures;[.]

(9) Shall review any grant programs or tax incentives that will aid historic preservation as approved by the County Council or County Executive and review any applications based on those programs.

(B) In addition, the Historic Preservation Commission shall have all the powers and authority enumerated in Md. Code Ann., Land Use Article, Title 8, as presently codified and as may be amended from time to time.

#### § 1-23-6. DESIGNATION.

(A) Designation. The county governing body may designate boundaries for landmarks, sites, structures, or districts of historic, cultural, archaeological, or architectural



significance after a public hearing thereon, consistent with adopted criteria for such designation.

(B) Criteria for designation. In considering any property for designation to the Frederick County Register of Historic Places, the reviewing agencies, boards, or commissions shall consider the following criteria.

(1) Historic, archaeological, and cultural significance:

(a) The property has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the county, state, or nation;

(b) The property is the site of an historic event;

(c) The property is identified with a person or group of persons who influenced society; or

(d) The property exemplifies the cultural, economic, social, political, or historic heritage of the county and its communities.

(2) Architectural and design significance:

(a) The property embodies the distinctive characteristics of a type, period, design style, or method of construction of landscape architecture, engineering, public art, or architecture;

(b) The property represents the work of a master craftsman, architect, landscape architect, engineer, artist, or builder;

(c) The property possesses significant artistic value;

(d) The property represents a significant and distinguishable entity whose components may lack individual distinction;

(e) The property represents an established and familiar visual feature of the neighborhood, community, or county, due to its singular physical characteristics, landscape, or historical event; or

(f) The property is a rare example of a particular period, style, material, or construction technique.

(C) Procedure for petitioning for designation.

(1) Petitions for designation or expansion shall be filed with, and on forms provided by, the Frederick County Department of Planning and Development Review Division of Planning and Permitting ["Division"].

(2) The Division [Department of Planning and Development Review] shall refer the petition to the Historic Preservation Commission to determine if the property contained in the petition meets the requirements for historic designation. The Division [Department of

~~Planning and Development Review~~ shall also notify other appropriate agencies for comment.

(3) A petition for a proposed individual ~~[site]~~ ~~landmark~~ shall be filed by, or with the written consent of, the legal owner of such ~~[site]~~ ~~landmark~~.

(4) A petition for a proposed historic district shall be filed by a legal owner or owners of property within the district.

(5) (a) The Historic Preservation Commission, in a public meeting, shall determine if the property contained in the petition meets the requirements for historic designation as set forth in this section. If the requirements are so met, the Historic Preservation Commission shall recommend historic designation to the county governing body. Legal property owners within a proposed historic district shall be notified of the nomination by certified mailing.

(b) The recommendation for an historic district shall proceed to the county governing body if, within 60 days of the Historic Preservation Commission finding, concurrence is obtained from both:

1. Owners of at least 51% of the assessed valuation of the real property located within the proposed historic district; and

2. At least 51% of the owners of the real property located within the proposed historic district.

(c) In determining the owner(s) of real property for purposes of this section:

1. Multiple owners of a single parcel are treated as 1 owner; and

2. A single owner of multiple parcels is treated as 1 owner.

(6) If a property or district within Frederick County shall be deemed by the Historic Preservation Commission to possess unusual ~~[and special]~~ historic value to the citizens of Frederick County, the Historic Preservation Commission may initiate a petition for historic designation. In this instance, the petition shall first be sent to the Maryland State Historic Preservation Officer for ~~their~~ ~~[his or her]~~ concurrence that said property has unusual ~~[and special]~~ historic value. If the Maryland State Historic Preservation Officer does concur with the Historic Preservation Commission, then the petition shall proceed to the county governing body. A petition for designation of an area of ~~unusual historic value~~ ~~[special merit]~~ shall require a favorable vote of the County Council ~~[and the concurrence of the property owner(s) in the proposed area of special merit]~~ to receive historic designation.

(D) Limitations on filing of petitions. If the county declines to designate a property proposed for designation, the identical petition for designation may not be refiled within 1 year of the final decision by the county. If the county declines to expand the boundary of a previously designated historic property, a petition for expansion which is identical to the rejected petition may not be refiled within 1 year of the final decision by the county.

#### **§1-23-6.1 DELISTING PROPERTIES FROM HISTORIC DESIGNATION**

(A) In order to delist (remove) a property or a Historic District from the County Register, the Historic Preservation Commission must find, and the County Council must confirm, that the property or properties have ceased to meet the criteria for historic designation as set forth in 1-23-6(B) because the qualities that caused the property or properties to be included in the original designation have been lost or destroyed.

(B) In addition to the requirements of subsection (A) above, delisting of an entire historic district will require approval by: (1) owners of at least the same percentage of the assessed valuation of the real property located within the historic district as initially approved the designation of the historic district; and (2) owners of at least the same percentage of the real property located within the historic district that initially approved the designation of the historic district.

#### § 1-23-7. APPLICATION FOR CERTIFICATE OF APPROVAL [APPROPRIATENESS] AND COMMISSION REVIEW.

(A) Application for certificate of approval [appropriateness]. Before the construction, alteration, reconstruction, moving, or demolition is undertaken of a designated landmark, site, or structure, or site or structure within a designated district, if an exterior change is involved which would affect the historic, archaeological, or architectural significance of a designated landmark, site, or structure, or site or structure within a designated district, the person, individual, firm, or corporation proposing to make the construction or change shall file an application for a certificate of approval [appropriateness] with the Commission for permission to construct, alter, reconstruct, move, or demolish the landmark, site, or structure. Every application shall be referred to and considered by the Commission and accepted or rejected by the Commission. An application which is identical to a rejected application may not be resubmitted within a period of 1 year after the rejection. No certificate of approval [appropriateness] shall be granted until the Commission has acted thereon as hereinafter provided.

(B) Application review.

(1) In reviewing applications, the Commission shall give consideration to the historic, archaeological, or architectural significance of the landmark, site, or structure and its relationship to the historic, archaeological, or architectural significance of the surrounding area; the relationship of the exterior architectural features of a landmark or structure to the remainder of the landmark or structure and to the surrounding area; the general compatibility of proposed exterior design, scale, proportion, arrangement, texture, and materials to the landmark, site, or structure and to the surrounding area; and any other factors, including aesthetic factors which the Commission deems to be pertinent.

(2) The Commission shall consider only exterior features of a landmark or of a structure within a [preservation] historic district, and its appurtenances and environmental setting, and shall not consider any interior arrangements.

(3) The Commission shall not disapprove an application except with respect to the several factors specified in paragraph (1) above.

(4) The Commission shall be strict in its judgment of plans for sites or structures determined by research to be of historic, archaeological, or architectural significance. The Commission shall be lenient in its judgment of plans for sites or structures of little historic, archaeological, or architectural significance, or of plans involving new construction, unless in the Commission's judgment such plans would seriously impair the historic, archaeological, or architectural significance of surrounding sites or structures. The Commission is not required to limit construction, reconstruction, or alteration to the architectural style of any 1 period.

~~— [(5) (a) If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure or for the moving or demolition of a structure, the preservation of which the Commission considers to be of unusual importance to Frederick County or of unusual importance to the state or the nation, the Commission shall attempt to formulate an economically feasible plan with the owner(s) of the site or structure for the preservation of the site or structure. Unless the Commission is satisfied that the proposed construction, alteration, or reconstruction will not materially impair the historic, archeological, or architectural significance of the site or structure, the Commission shall reject the application, filing a copy of its rejection with the Department of Permits and Inspections, where required.~~

~~— (b) 1. If an application is submitted for construction, reconstruction, or alteration, or for the moving or demolition of a site or structure that the Commission considers to be of unusual importance and no economically feasible plan can be formulated, the Commission shall have 90 days, from the time it concludes that no economically feasible plan can be formulated, to negotiate with the owner and other parties in an effort to find a means of preserving the site or structure.~~

~~— 2. In the case of a site or structure considered to be valuable for its historic, archeological, or architectural significance, the Commission shall approve the proposed construction, reconstruction, alteration, moving, or demolition despite the provisions of subsection (B)(5) of this section if:~~

~~— a. The site or structure is a deterrent to a major improvement program which will be of substantial benefit to the county;~~

~~— b. Retention of the site or structure would cause undue financial hardship to the owner; or~~

~~— c. Retention of the site or structure would not be in the best interests of a majority of persons in the county.]~~

(C) Commission decision. The [Commission] Division Staff shall issue a letter to the applicant [file with the Department of Permits and Inspections a certificate] documenting its the Commission's approval, modification, continuance, or rejection of each application and plans submitted to the Commission for review. The Division Staff shall issue a

certificate documenting the Commission's approval or modification of each application and plans submitted to the Commission for review. Work shall not be commenced and no building permit shall be issued on any project until notification of approval of a certificate of approval [appropriateness] has been received by the Department of Permits and Inspections [from the Commission]. The failure of the Commission to act upon a completed application within 45 days from the date the completed application was filed shall be deemed to constitute automatic approval of the proposed changes unless an extension of this 45 day period is agreed upon mutually by the applicant and the Commission or the application has been withdrawn.

(D) Routine maintenance. Nothing in this chapter shall be taken or construed to prevent maintenance that will have no material effect on the exterior fabric or features of a designated landmark, site, structure, or district, or to prevent customary farming operations or landscaping that will have no material effect on the historic, archaeological, or architectural significance of a designated landmark, site, structure, or district.

(E) This section shall not apply to areas within a designated district which have been identified as advisory due to existing agricultural preservation easements.

#### § 1-23-8. RELOCATION OR DEMOLITION OF NON-DESIGNATED SITES OR STRUCTURES

(A) Applicability. This section applies to:

(1) All Type 1 site plans, preliminary plans, grading plans, zoning map amendments, concept plans, and sketch plans (hereinafter a "Plan" or "Plans") that include a proposal to move or demolish all or a portion of a non-designated site or structure that is 50 years old or older, whichever Plan is submitted first.

(2) Any revised Plan that includes a proposal to move or demolish all or a portion of a non-designated site or structure that is 50 years old or older, whichever Plan is submitted first.

(3) An application (that does not involve any of Plan or Plans described in subsection (A)(1) above) submitted to the Department of Permits and Inspections for the moving or demolition of all or a portion of a non-designated site or structure that is 50 years old or older.

(B) Assessment of Significance.

1. If a Plan or application is submitted for the moving or demolition of all or a portion of a non-designated site or structure that is 50 years old or older, the Plan or application will be forwarded to Historic Preservation staff to determine whether the site or structure has historical, cultural, architectural, or archaeological significance. A property has historical, cultural, architectural, or archaeological significance if it meets the criteria in §1-23-6(B) above. If no significance is determined, the Plan or application for moving or demolition of all or a portion of

the site or structure may move forward. If the site or structure is determined to be significant, Historic Preservation staff shall forward the Plan or application to the Commission for review and recommendation.

2. If the Commission considers the preservation of the site or structure to be of unusual historic value to Frederick County, the State, or the nation, the Commission or their designee shall attempt to formulate an economically feasible plan with the owner(s) of the site or structure, who will act in good faith, for the preservation of the site or structure.
3. If a Plan or application is submitted for the moving or demolition of a site or structure that the Commission considers to be of unusual historic value and no economically feasible plan can be formulated, the Commission or their designee shall have 90 days, from the time it concludes that no economically feasible plan can be formulated, to negotiate with the owner and other parties in good faith in an effort to find a means of preserving the site or structure. If no means of preserving the site or structure is agreed upon, the Plan or application shall be approved unless § 1-23-6(C)(6) applies.

(C) *Special Merit Exception.* Even if a non-designated site or structure that is 50 years old or older is considered to be valuable for its historic, cultural, archaeological, or architectural significance, the Commission may approve a Plan or application that proposes moving or demolition of the site or structure if:

- (1) the site or structure is a deterrent to a major improvement program that will be of substantial benefit to the local jurisdiction; or
- (2) the retention of the site or structure would:
  - (a) cause undue financial hardship to the owner; or
  - (b) not be in the best interests of a majority of persons in the community.

#### § 1-23-9. ECONOMIC HARDSHIP

Any owner seeking an exemption from the operation of this ordinance for economic hardship has the burden of proof to show by clear and convincing evidence that the owner does not have the financial ability to comply with the requirements of the historic preservation ordinance. In making its determination, the Historic Preservation Commission shall consider a justification statement and any additional evidence submitted by the owner. A finding of economic hardship shall not be made in cases of owner neglect or other self-created hardship or undercapitalization.

#### § 1-23-10 [8]. DEMOLITION BY NEGLECT.

(A) The purpose of this section is to prevent the gradual deterioration of historic resources due to a failure to provide normal and customary maintenance such that the unique attributes and character of the historic resource or district might be lost due to decay, deterioration, or structural defects.

(B) The property owner of an individually designated landmark, site, or structure, or of a site or structure within a designated historic preservation district shall not permit such landmark, site, or structure to fall into a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce or tend to produce, in the judgment of the Commission, a detrimental effect upon the character of the district as a whole or the life and character of the landmark, site, or structure in question, including:

- (1) Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling;
- (2) Deterioration of flooring or floor supports, roofs, or other horizontal members that cause leaning, sagging, splitting, listing, or buckling;
- (3) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling;
- (4) Deterioration or crumbling of exterior plasters or mortars;
- (5) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors;
- (6) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering;
- (7) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling;
- (8) Deterioration of landscape features relevant to the historic integrity of the structure or site, including but not limited to: fences, gates, and accessory structures.

[(A)] [C] In the event of demolition by neglect, the Commission may request the Director of the Department of Permits and Inspections or their designee to notify, in writing, the property owner of record as reflected on the tax rolls of Frederick County, and the occupant or other person responsible for the maintenance of the property, of the deterioration. The notice shall specify the minimum items of repair or maintenance necessary to correct the deterioration or prevent further deterioration.



~~[(B)]~~ Prior to the issuance of a written notice, the Commission may request the Department of Permits and Inspections to establish a record of demolition by neglect. Such a record may include dated materials such as photographs and written reports of the condition of the property so as to record or measure the deterioration.

~~[(C)]~~ [(D)] The notice shall provide that corrective action shall commence within 30 days of the receipt of said notice and be completed within a reasonable time thereafter. The notice shall state that the owner of record of the property, or any person of record with any right, title, or interest therein, may, within 10 days after the receipt of the notice, request a hearing on the necessity of the items and conditions contained in the notice. In the event a public hearing is requested, it shall be held by the Commission upon 30 days' written notice being mailed to all persons of record with any right, title, or interest in the property and to all citizens and organizations which the ~~[Commission]~~ Director of the Department of Permits and Inspections or their designee determines may have an interest in the proceedings.

~~[(D)]~~ [(1)] If, after the public hearing, the Commission determines that the corrective actions remain necessary, the Commission may request the Director of the Department of Permits and Inspections to issue a final notice ~~[corrective action]~~ to comply with the corrective action notice within 30 days of the date of the Commission's determination.

~~[(E)]~~ [(2)] Upon failure, neglect, or refusal of the property owner or other responsible person, duly notified, to take the corrective action specified in the corrective action notice within the time required, the Commission may request that the Director of the Department of Permits and Inspections or their designee enter the building or premises affected by the order and cause the building or premises to be repaired, or cause any dangerous condition to be remedied, as the case may be, at the expense of the owner ~~[institute any of the remedies and penalties provided by law for such violations]~~.

[(3)] If the property owner fails to repay the County for expenses incurred under subsection (D)(2) above within thirty (30) days after written demand has been mailed to their last known address, the Director of Permits and Inspections shall notify the County Treasurer and a tax lien in favor of the County for the amount of the expenses incurred under subsection (D)(2) shall attach to the property. The property may be sold at tax sale to satisfy the lien.

[(4)] Failure to comply with the original or final correction notice shall constitute a violation of this chapter for each day that such violation continues and shall be punishable as set forth in § 1-23-16 of the Frederick County Code.

## **§ 1-23-11. ARCHAEOLOGICAL PROTECTION**

[(A)] *Archaeological Resources.* The purpose of this section is to identify, evaluate, and protect archaeological resources in Frederick County, which are defined in §1-23-3 above.



Archaeological resources are non-renewable resources that tangibly connect the County's history across hundreds and thousands of years.

(B) *Applicability.* This section applies to:

(1) All Type 1 site plans, preliminary plans, zoning map amendments, and grading plans (hereinafter a "Plan" or "Plans") that are submitted to the Division or to the Planning Commission for consideration. Compliance with this section is recommended for concept plans and sketch plans.

(2) For Type 1 site plans, preliminary plans, and zoning map amendments, compliance with this section must be completed prior to a Plan being scheduled for Planning Commission review. For grading plans, compliance with this section must be completed prior to approval by staff.

(3) Any revised Plan that extends the limits of disturbance of the original Plan may also be subject to this section. Applicants should contact the Division to determine if the revisions constitute a need for additional archaeological review.

(4) This review process cannot be completed in lieu of any state or federal review process that a project may be subject to.

(C) *Administration.* This section shall be administered by the Division, which may adopt reasonable procedures for its administration, consistent with applicable law. All reviews will be conducted by a Professional Archaeologist working [with] for the Division and whose professional qualifications meet or exceed those established by the Secretary of the Interior.

(1) All archaeological work must be designed and completed by a Professional Archaeologist in accordance with the *Standards & Guidelines for Archaeological Investigations in Maryland*. Failure to submit the required materials for archaeological review may cause delays in the plan review process.

(D) *Archaeological significance.* The significance of archaeological resources identified within the area of potential impact will be evaluated by a Professional Archaeologist working for the Division, applying the National Register of Historic Places Criteria for Evaluation (Criteria). The archaeological resources will be considered significant if [it possesses] they possess one or more of the qualities of significance as defined by the Criteria, can be associated with a historic context, and retains historic integrity.

The National Register of Historic Places Criteria for Evaluation state that the quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

(1) Criteria A: That are associated with events that have made a significant contribution to the broad patterns of our history; or

(2) Criteria B: That are associated with the lives of persons significant in our past; or

(3) Criteria C: That embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) Criteria D: That have yielded, or may be likely to yield, information important in prehistory or history.

**(E) Assessment of Archaeological Potential.** Prior to the submission of any applicable Plans to the Division, applicants must participate in a scoping meeting with the Professional Archaeologist for the Division to discuss the archaeological potential of the property and the scope of any potential archaeological studies.

(1) At least 45 days prior to the scoping meeting, the applicant must submit a request for an assessment of archaeological potential for the proposed project. This request includes, but is not limited to, full and accurate information about all ground disturbing activities proposed at the site, existing conditions survey, a contour map of the project area, photographs of the site, and any known historic resources on the site.

(2) Following the submission of the above information by the applicant, the Division will research and perform on-site inspection to create an assessment of the archaeological potential of the proposed project area, which will be presented to the applicant at the scoping meeting. The applicant will coordinate with the Division's Professional Archaeologist for site visits as needed. No archaeological identification study should be started prior to the review of the archaeological potential of the proposed project area by the Division's Professional Archaeologist.

(3) Exemptions may be made at the discretion of the Division's Professional Archaeologist if the area of potential impact is less than 5,000 square feet, if the area has significant existing disturbance that has already destroyed potential archaeological sites, or if a previously conducted survey unrelated to the Plan being applied for has concluded that archaeological resources are non-existent.

**(F) Archaeological Studies.** Following the archaeological assessment scoping meeting, if the applicant was not granted an exemption, the applicant must:

(1) Undertake an archaeological identification study (Phase I) and an archaeological evaluation study (Phase II), as determined in the scoping meeting, by a Professional Archaeologist for the area determined in the scoping meeting to identify and evaluate intact archaeological resources in accordance with standards outlined in the most current edition of the *Standards and Guidelines for Archeological Investigations in Maryland*. A copy of the archaeological identification and evaluation report and completed or updated **Maryland Inventory of Historic Properties**

(Archaeology) forms must be submitted to the Division of Planning and Permitting for review and comment.

(2) The Division of Planning and Permitting shall have 30 days to comment on the materials submitted by the applicant. After the Division of Planning and Permitting's comments have been addressed by the applicant and their Professional Archaeologist, a final copy of the archaeological identification or evaluation report and a copy of the Maryland Inventory of Historic Properties (Archaeology) forms must be submitted to the Division of Planning and Permitting. A copy of the report and forms shall be forwarded by the Division to the Maryland Historical Trust. A redacted copy of the archaeological identification or evaluation report must be submitted to the Division of Planning and Permitting.

(a) If no archaeological resources are identified as the result of the archaeological identification and evaluation studies, a summary letter of negative findings must be submitted to the Division by the applicant's Professional Archaeologist.

(b) If archaeological testing identifies archaeological resources, but determines that they are not significant, in accordance with subsection (D) above, then the archaeological identification and evaluation report must be submitted to the Division. The Division will have 30 days to confirm that the identified resources are not significant, in accordance with subsection (D) above.

(c) If archaeological testing identifies significant archaeological resources in accordance with subsection (D) above, an archaeological resource management plan must be submitted to the Division. The Division will render a determination in writing regarding the acceptability of the proposed archaeological resource management plan within 30 days after receipt of the studies and management plan, unless written consent to extend such period is given by the applicant. The applicant maintains the right to amend their application to avoid areas of high archaeological potential or known archaeological resources.

(3) The County will treat archaeological resource locations and reports with discretion.

(G) Archaeological identification and evaluation report and resource management plan.

(1) When required under the provisions of this section, the applicant must submit, as part of the Plan application an archaeological identification report, an evaluation study, and archaeological resource management plan, as necessary, prepared by a Professional Archaeologist. All archaeological investigations, reports, and plans will conform with the most current edition of the *Standards and Guidelines for Archaeological Investigations in Maryland*.

(2) An archaeological identification and evaluation report must include a detailed evaluation of the archaeological significance of the archaeological resources on the property, specifically addressing the proposed disturbance within the Plan area, including a detailed assessment of the information potential of identified resources according to the criteria outlined in subsection (D) above.

(3) An archaeological resource management plan must include reasonable measures for the preservation or mitigation of adverse effects on significant archaeological resources within the Plan's area of proposed disturbance, including but not limited to additional archaeological testing, archaeological data recovery (Phase III), site construction monitoring, archaeological resource avoidance, field recording, photography, laboratory analysis, conservation of organic and metal artifacts, curation of the collection (e.g., artifacts, notes, photographs), public interpretation, and the preparation of reports.

(5) The archaeological resource management plan must provide reasonable measures for further archaeological study, stabilization, conservation, curation of recovered artifacts by an appropriate public or private curation facility or museum, and in situ preservation of archaeological resources found within the site plan area, as required by the Planning Commission.

(H) *Review of archaeological evaluation report and resource management plan.* The archaeological identification and evaluation studies and archaeological resource management plan must be reviewed and approved, disapproved, or approved with modifications or conditions, as part of the applicable plan review process.

(1) This review will be completed and summarized in writing by a Professional Archaeologist for the Division. In case of a substantive disagreement between the County and the applicant regarding the findings, the County can request a review by and consultation with the Maryland Historical Trust. The findings by the Maryland Historical Trust will be nonbinding.

(I) *Appeal.* An applicant has 30 days from the date of the Division's final determination to file an appeal for a hearing with the Division Director. The Division Director will use best efforts to hold the hearing within 30 days of the appeal request. If an applicant is still aggrieved by the Division Director's decision, they may appeal to the Circuit Court, pursuant to Maryland Rules Title 7, Chapter 200.

(J) *Unanticipated Discoveries.* If the applicant or the applicant's employees or assignees uncover unanticipated discoveries during soil disturbance, work in the immediate vicinity must cease immediately and the Division must be notified. Construction activities in the vicinity must not resume until such time that all relevant parties have agreed upon a course of action. If any human remains, funerary objects, or other features or artifacts associated with a cemetery are uncovered, refer to the procedure laid out in § 1-23-12 (F).

## **§ 1-23-12. CEMETERIES**

(A) *Preamble.* Burial sites, human remains, and funerary objects are significant cultural resources and should be treated with dignity and respect in all circumstances. Disturbing or disinterring burial sites, human remains, or funerary objects, when not requested by descendants, associated indigenous people, or required by applicable law or regulation, should not be pursued unless there are no other alternatives available, and only after consultation with descendants or other legally authorized individuals or groups and fully considered avoidance of impact and preservation in place. The burial sites, human remains, and funerary objects of certain groups of people, including but not limited to indigenous people and enslaved persons and their descendants, have a higher probability of being unmarked and undocumented and are thus more likely to be affected by development activity.

(B) *Applicability.* This section applies to all preliminary plans, site plans, plats, concept plans, sketch plans, and grading permits for properties that have a cemetery on the site.

(C) *Cemetery identification.* The location and boundary of an onsite cemetery must be determined by one of the following methods, in consultation with the Division:

(1) a survey using professionally acceptable methods and techniques performed by a professional, including archival research, professional archaeology, geophysical survey methods, and/or other nondestructive approved techniques; or

(2) observations in the field including visible gravestones or markers, a pattern of depressions indicative of graves, or associated fence boundaries; or

(3) reference to a modern map or plat or evidence found on historic maps or documents.

(D) *Preservation.* A property owner/developer must preserve an onsite cemetery by meeting the following requirements:

(1) grading, construction, or subsurface disturbance within 25 feet of the known cemetery boundary is prohibited; however, if a developer professionally surveys the cemetery as described in subsection (C)(1) above, the boundary of no disturbance may be decreased to 15 feet from the surveyed cemetery boundary;

(2) appropriate measures must be taken to protect the cemetery during construction, such as a field-delineated limit of disturbance zone, orange blaze safety fencing, or other appropriate physical markings;

(E) *Reinterment.* If a property owner/developer disinters and reinters human remains at a burial site or sites, they must follow reinterment law outlined in the Criminal Law Article of the Maryland Code, specifically, Title 10: Crimes Against Public Health, Conduct, and Sensibilities, Subtitle 4: Crimes Relating to Human Remains, § 10-402 (d-f) and, if applicable, consult with the Maryland Historical Trust as outlined in Real Property article of Maryland Code § 14-121.1. Proper treatment of burial site in existence for more than 50 years.

(F) *Discovery.* If any person discovers the existence of previously unknown human remains, tombstones, funerary objects, or other evidence of a cemetery which reasonably indicates the presence of a cemetery in the course of grading, construction, or work of any kind, that person must stop work immediately in the discovery area and must give notice of the discovery within 24 hours to the State's Attorney, the Division and, if applicable, consult with the Maryland Historical Trust as outlined in Real Property Article of Maryland Code §14-121.1. Proper treatment of burial site in existence for more than 50 years. All permits issued relating to the discovery area will be suspended and the property owner/developer must stop all work in the discovery area until a determination is made pursuant to subsection (C) above. If reasonably identifiable, the property owner will notify the nearest descendent of the discovery.

(1) *Determination.* The Division will determine, in consultation with the State's Attorney Office, if the discovery area is a cemetery. In making this determination, the Division may require the property owner to comply with the cemetery identification portions of subsection (C) above. If the Division determines that the area is not a cemetery, the stop-work order will be lifted, and the suspended permits released by the Division.

(2) *Cemetery protection.* If it is determined that the discovery area is a cemetery, the property owner must comply with the requirements of cemetery preservation listed in subsection (C) of this section and any requirements from the State's Attorney Office.

#### (G) Subdivision and Site Plan Review

(1) *Inventory of Cemetery Elements and Cemetery Narrative Descriptions.* An inventory of existing cemetery elements (such as walls, gates, landscape features and tombstones, including a record of their inscriptions) and their condition must be submitted as part of any site development plan or preliminary plan application. All plan submissions are required to provide a narrative description and map identifying the location of cemeteries and known historic and archaeological resources on the site.

(2) *Establish a Permanent Fence.* When a proposed preliminary plan or site development plan includes a known cemetery within the site, the applicant must provide and maintain an appropriate fence or wall constructed of stone, brick, metal, or wood to delineate the cemetery boundaries. The design of the proposed enclosure and a construction schedule must be approved by the Planning Commission, or its designee, prior to the issuance of any permit.

(3) *Right of Way.* A 15-foot right-of-way from the nearest public or private road will be required to maintain family or person of interest access to the cemetery.

(4) *Nonbuildable and Open Space Lots.* Property owners or developers must accommodate the cemetery within the development by: i) placing the cemetery in a nonbuildable lot with a cemetery designation; ii) dedicating the cemetery to a

homeowner's association or a preservation, conservation, or religious organization; iii) providing that the cemetery remains as a cemetery in perpetuity; and iv) providing individuals related by blood or marriage or a person of interest access to the cemetery. Any land placed in a nonbuildable cemetery lot designation pursuant to this section may be counted towards open space requirements. Alternatively, a property owner or developer may transfer the cemetery to the private ownership and care of a family member or descendant group.

(H) *Grading permit review.* All grading permit submissions are required to provide a narrative description and map identifying the location of known cemeteries, distance from the grading activity to the known cemetery boundary, and known historic and archaeological resources on the site.

(I) *Plat review.* All submitted plats must include the known boundaries of all known cemeteries within the plat.

#### **§ 1-23-13. COUNTY-OWNED HISTORIC PROPERTIES.**

For any proposed alteration to a County-owned property, which is designated as historic or eligible for historic designation, per § 1-23-6, that would affect that property's historic integrity, Historic Preservation staff of the Division will be consulted on ways to avoid, minimize, or mitigate adverse effects to the property that would result from the proposed alteration.

#### **§ 1-23-14 [9]. MARYLAND HISTORICAL TRUST.**

The Commission may designate the Maryland Historical Trust to make an analysis of and report recommending the preservation of sites, structures, or districts of historic, archaeological, architectural, or cultural significance within the county. The report may include proposed boundaries of sites, structures, or districts, as well as recommendations for the identification and designation of particular sites, structures, or districts to be preserved.

#### **§ 1-23-15 [10]. APPEALS.**

In the event that any party is aggrieved by a decision of the Commission or the county, the party has the right of appeal to the Circuit Court in accordance with the Maryland Rules of Procedure 7-201 and following and in accordance with the provisions of Md. Code Ann., Land Use Article.

#### **§ 1-23-16 [11]. VIOLATIONS.**

(A) A violation of this chapter shall be subject to enforcement by the Division Director or their designee ("Enforcement Official"), pursuant to § 1-1-9 of the Code.

(B) The Enforcement Official is not required to issue a warning notice.

(C) A first offense shall be deemed a Class C civil offense. Each subsequent offense by the same individual or property owner(s) shall be cited at the next highest Class of offense.

(D) The Enforcement Official may, in consultation with the County Attorney, seek additional legal remedies as appropriate under the circumstances.

~~[(A) Any person, firm, or corporation, or agent of such, who violates a provision of this chapter by willfully performing or allowing to be performed any construction, alteration, moving, demolition (including demolition by neglect) or repair of any structure within a historic district without first obtaining a certificate of appropriateness (as required), failing to comply with any final notice issued pursuant to this subtitle, or disobeying or disregarding a decision of the Historic Preservation Commission, may be liable for a civil monetary fine of \$100, and each days' violation of the provision hereof shall constitute a separate offense.~~

~~—(B) In addition to other remedies and penalties, where there is any violation of this chapter, the Department of Permits and Inspections, the Historic Preservation Commission, and the Zoning Administrator shall institute appropriate action, where applicable, to prevent, enjoin, abate or remove such violations.]~~

#### § 1-23-17 ~~[42]~~. CHANGES AND AMENDMENTS.

(A) The Historic Preservation Commission will review this chapter every 5 years to ensure that its provisions meet the current needs of Frederick County. If the Commission determines that changes need to be made, they will be submitted to the County Executive for a decision as to whether to send the proposed changes to the County Council.

[In addition, this chapter may from time to time be amended, supplemented, changed, modified, or repealed by the county governing body. Any person or officer, department, board, commission or bureau of the county may petition for such change or amendment; however, no such change or amendment shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the county.]

(B) The County Council [county governing body] shall, prior to any public hearing, refer all proposed changes and amendments to this chapter to the Historic Preservation Commission for review ~~[report]~~ and recommendations.



§ 1-23-~~18~~ ~~[13]~~. SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid for any reason, such invalidity shall not affect the other provisions or any other application of this ~~chapter~~ ~~[article]~~ which can be given effect without the invalid provision or application, and to this end, all the provisions of this chapter are hereby declared to be severable.

§ 1-23-~~19~~ ~~[14]~~. APPLICABILITY.

The provisions of this chapter shall apply to all unincorporated lands within the territorial limits of the county.